

**Opening the Window
to Government:**

**How e-RD/AD Promotes
Transparency, Accountability
and Good Governance**



**Ann Cavoukian, Ph.D.
Commissioner
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**Information and Privacy
Commissioner/Ontario**

80 Bloor Street West
Suite 1700
Toronto, Ontario
M5S 2V1

416-326-3333
1-800-387-0073
Fax: 416-325-9195
TTY (Teletypewriter): 416-325-7539
Web site: www.ipc.on.ca

This publication is also available on the IPC Web site.



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Opening the window to government

The over-arching purpose of access to information legislation ... is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.

Parliament and the public cannot hope to call the government to account without an adequate knowledge of what is going on; nor can they hope to participate in the decision-making process and contribute their talents to the formation of policy and legislation if that process is hidden from view. Access laws operate on the premise that politically relevant information should be distributed as widely as possible.¹

¹ Supreme Court of Canada - Dagg v. Min. of Finance [1997] 148 D.L.R. (4th) 385.

Access to information is a fundamental and necessary democratic right

The values underlying freedom of information (FOI) laws, regardless of their jurisdiction, are quite simple — open, transparent, accountable and citizen-driven government. Stated simply, FOI legislation is based on a presumption that information should be widely available and accessible to the public. Governments throughout the world have recognized that citizens of a democratic state have the right to know what their government is doing, and to hold it responsible for its actions and inactions. Accordingly these rights have been enshrined in legislation providing for, and protecting, public access to government-held information.

There have been numerous reports, commissions and studies on the importance of access legislation in Canada and around the world. One seminal study was the 1980 *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy* chaired by Carleton Williams for the Government of Ontario. Seven years later a federal parliamentary report was produced entitled, *Open and Shut: Enhancing the Right to Know and the Right to Privacy: A Report of the Standing Committee on Justice and Solicitor General on the Review of the Access to Information Act and the Privacy Act*. These works, and countless other government and academic papers, clearly illustrate the import and valuable roles FOI legislation play in aiding public oversight of the administration of government. Given the work that has been done in this field, it is assumed that this paper does not need to repeat these arguments, and takes for granted that the case has been made for public access to government information.

That said, statutory access rights alone are not the only reflection of an open and transparent government. A truly effective access scheme requires governments to move beyond the reactive nature of the law, and embrace routine disclosure and active dissemination (RD/AD)² of information as key elements of transparent and fully accountable public administration. Furthermore, many organizations that have benefited from implementing RD/AD³ are looking to use recent developments in information technology to advance the concept and maximize the benefits that RD/AD can offer both organizations and the public.

The Office of the Information and Privacy Commissioner/Ontario (IPC) advocates the adoption of electronic-RD/AD (e-RD/AD) in an effort to more widely disseminate government information, to provide the broadest possible public access to publicly-held information and to help reduce the barriers to access while lowering the cost and increasing the efficiency of compliance with FOI legislation.

² Routine Disclosure (RD) is the routine or automatic release of certain types of administrative records in response to informal requests for information rather than formal requests under FOI legislation. Active Dissemination (AD) is the periodic release of government records in the absence of a request.

³ See the joint IPC/Management Board Secretariat Paper: Routine Disclosure/Active Dissemination (RD/AD) <www.ipc.on.ca/english/pubpres/papers/rdad-e.htm>, the related IPC Practice <www.ipc.on.ca/english/our_role/code/practices/num-22e.htm>, Enhancing Access to Information: RD/AD Success Stories <www.ipc.on.ca/english/pubpres/papers/successe.htm>, c. 06/07/01.

e-Government, e-Democracy, e-Citizenship

Surveys show Canadians are active adopters and users of information technology. Canadians are world leaders in the use of the Internet, spending more time online per month than people from any other country. A study released May 23, 2001 by CF Group⁴ in Toronto noted how eagerly Canadians have embraced this new medium:

- 66% of Canadian Internet users would vote online if it were possible;
- 70% of online Canadians think having government information available on the Internet makes it more available to the public; and
- 40% of online Canadians visits a government Web site monthly — with the most popular government Web sites being those related to employment, taxation and education.

These survey results closely parallel others, like the PricewaterhouseCoopers Canadian Consumer Technology Survey 2000,⁵ that showed four out of every five people who go to a government Web site want information — not specific services, just information on programs and services offered by that particular ministry, agency, city or school board.

Similarly, in September 2000, a U.S. organization, the Council for Excellence in Government, released a study that found that Americans favoured government Web sites that allowed them, for example, to look up voting records, comment on federal legislation and monitor public hearings. The study, *E-Government: The Next American Revolution*⁶ also asked the public to rate the most appealing aspects of e-government, and access to government services took a distant fourth. When people were asked their views on the most important of four possible benefits of e-government, access to services came last:

- 36% said the biggest benefit of e-gov is that government will be made more accountable to its citizens;
- 23% indicated that greater public access to information is the biggest benefit;
- 21% reported their favour for more efficient and cost-effective government as the most desired benefit; and
- 13% felt more convenient government services are most important.

⁴ <www.cfgroup.ca/cfgi/english/whatsnew/news/News_Release_re_COG.pdf>, cited 06/06/01.

⁵ <www.pwcglobal.com/extweb/ncpressrelease.nsf/docid/6C05D8CB43319D71852569990056E0C2>, c.06/06/01.

⁶ <www.excelgov.org/egovpoll/report/poll_report.PDF>, c. 06/06/01.

It is important to emphasize that there are a number of connected and parallel initiatives tied to the broader concept of e-government, of which e-RD/AD, while the focus of this paper is only one aspect. It is well known that e-government has many faces including: electronic service delivery, public sector systems transformation, and digital democracy. The Canadian federal government has committed to making most of its services available online by 2004⁷ while the Government of Ontario⁸ wants to do the same thing by 2003 — creating a single digital window to government.⁹ An example of this single window is the British government's recently announced Government Gateway,¹⁰ a site that will eventually be the main access point to 200 central government and 500 local government institutions. FirstGov.gov is the U.S. government's portal to 30 million pages of government information, services, and online transactions.

Much of the activity around e-government¹¹ has concentrated on providing Internet access to government services and static general information rather than using these services to promote the goal of access to information. The purpose of this e-RD/AD paper is to stimulate thinking around moving beyond this narrow perspective and focus on bringing the widest possible range of government held information to the public.

While there are numerous groups actively promoting openness and accountability in government such as Open Government Canada¹² and the Canadian Access and Privacy Association,¹³ both of which advocate for more accessible government, their efforts are often associated with politically motivated or media-driven interests. The United States has a virtually limitless number of organization and associations that fight on behalf of FOI access. Space does not permit for a broad philosophical discussion of the differing approaches to FOI in Canada and America. However, a brief analysis of the FOI laws in practice in the United States is instructive for how that country's perspective on public access to government information could provide some direction to our own initiatives. This paper also will highlight some recent Canadian FOI-related initiatives at the federal level, as they could have a positive effect on the way FOI matters are viewed and handled in Ontario.

⁷ <www.gol-ged.gc.ca/index_e.asp>, c. 06/06/01.

⁸ <www.cbs.gov.on.ca/mcbs/english/56HK6V.htm>, c. 06/28/02.

⁹ The government has noted that e-gov provides "Stronger Accountability" and "improved access to information."

¹⁰ <www.gateway.gov.uk>, c. 06/06/01.

¹¹ There are a number of initiatives promoting e-democracy and e-citizenship. One significant Canadian initiative is the Crossing Boundaries project led by Winnipeg South M.P. Reg Alcock <www.crossingboundaries2.com>, c. 06/06/01. However, projects intended to "reconnect" citizens and elected officials using technology do not typically address FOI primarily, but rather focus on providing electronic services or creating a new sense of "digital democracy" and attempting to cross the "digital divide" between technological have and have nots.

¹² <www.opengovernmentcanada.org>, c. 06/06/01.

¹³ <www.capa.ca>, c. 06/06/01.

Examples of e-FOI in action

In 1993, then U.S. President Clinton sent a memorandum to all heads of federal departments and agencies, calling upon them to “renew their commitment to the Freedom of Information Act, to its underlying principles of government openness, and to its sound administration.” The President noted that the FOI legislation was “based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed.” Most importantly, the President concluded that:

[O]ur commitment to openness requires more than merely responding to requests from the public. Each agency has a responsibility to distribute information on its own initiative, and to enhance public access through the use of electronic information systems. Taking these steps will ensure compliance with both the letter and the spirit of the Act.¹⁴

A memorandum, similar in tone, by Attorney General Janet Reno, accompanied the President’s. The spirit of FOI remained strong in Washington following these executive memoranda and was reflected in the 1995 *Paperwork Reduction Act* and the 1996 *Electronic Freedom of Information Act Amendments* (E-FOIA).¹⁵

The E-FOIA legislation requires agencies post on their Web sites and make available through electronic reading rooms, all records that have been requested under the Freedom of Information Act in the past, and that have been, or are likely to be, subject to additional FOIA requests. This has resulted in the most popular and frequently requested records being available to the public without the need to submit a formal FOI request. The E-FOIA also required agencies to index all of their records and make these indices available online (similar to Ontario’s Directory of Records).¹⁶ These indices enable the public to describe, with greater accuracy, the records sought and decrease agency response time by making it easier to search for and identify the requested records.

¹⁴ <www.citizen.org/litigation/foic/clinton_94.html>, c. 06/06/01.

¹⁵ While the Reno memo has been “superseded” by October 12, 2001 memo from Attorney General John Ashcroft emphasizing the importance of safeguarding government information and changing standard of review from “foreseeable harm” to a lower standard of “sound legal basis,” one can only hope that this response will be limited to these particular tense times after the events of September 11, 2001. However, given the development of a new category of information assigned by the Information Security Oversight Office of “Sensitive But Unclassified Information” and the on-going efforts to remove significant amounts of information that was previously publicly accessible, the evidence would suggest that FOI has been seriously impacted, at least in the short term, by concerns over national security and public safety. See also *Access and Privacy: A Balancing Act*: a speech given by the IPC’s Greg Keeling to Open or Controlled Society? Access to Public and Corporate Information: A Civic Conference <www.ipc.on.ca/english/pubpres/speeches/051002gk.htm>.

¹⁶ <www.cfipo.gov.on.ca/mbs/dor/dirrec.nsf/webpages/main>, c. 06/06/01.

Enacted the year before E-FOIA, the *Paperwork Reduction Act* gave specific responsibilities to the Office of Management and Budget's (OMA) Office of Information and Regulatory Affairs (OIRA) to ensure that:

- effective and efficient information resource management practices are implemented across the government;
- the paperwork burden imposed by the federal government on the public is minimized; and
- the greatest possible public benefit comes from the collection, use, and dissemination of information collected from the public.

The OMB subsequently reported to Congress on the operation of the statute. In the September 1997 report, the OMB included a chapter on Government Information and Services: Information Dissemination Activities and Trends.¹⁷ The report noted the Clinton Administration's goal of using information technology to "make it easier for users of information, including citizens, scientists, resource managers, and private industry" to find the specific government information they need. The chapter concluded by stating:

[R]ecent advances in web and related search technology to make increasing amounts of electronic information more manageable ... reflects an unprecedented level of attention to the development of information dissemination practices that both integrate the vast information holdings of the Government and at the same time make them more accessible and useful to the public.

The importance of executive level support for initiatives such as the Paperwork Reduction Act and the E-FOIA legislation cannot be overstated. Bolstered by these legislative initiatives and program reviews undertaken by organizations such as the Government Printing Office,¹⁸ the discussion of public access to information has remained high on the political agenda over the years. We have recently seen a renewed interest in public access to information. In January 2001, the U.S. National Commission on Libraries and Information Science (NCLIS) released *A Comprehensive Assessment of Public Information Dissemination*.¹⁹ In this report, NCLIS recommended, "the United States Government formally recognize and affirm the concept that public information is a strategic national resource." The report called for the creation of an independent Public Information Resources Administration to be the lead agency for information policy and dissemination; similarly, there should be separate Congressional and Judicial Information Resources Offices.

¹⁷ <www.whitehouse.gov/omb/inforeg/prarep3.html>, c. 06/28/02.

¹⁸ Report on the Assessment of Electronic Government Information Products <www.access.gpo.gov/su_docs/nclisassessment/report.html>, c. 06/06/01.

¹⁹ <www.nclis.gov/govt/assess/assess.html>, c. 06/06/01.

The NCLIS report noted that, "Public ownership of information created by the federal government is an essential right. It not only allows individuals to fulfill their civic responsibilities, but also contributes to an overall improvement in their quality of life." The report highlighted a range of difficulties people have with online information including the accessibility of the resources required to get electronic files, the seeming ephemeral nature of electronic documents and a lack of a long-term access and storage solutions for such material.

A few months after the NCLIS report, the United States General Accounting Office released a Report to Congressional Requesters entitled, *Information Management - Progress in Implementing the 1996 Electronic Freedom of Information Act Amendments*.²⁰ The report found that while many of the provisions of the E-FOIA legislation had been enacted, there was still much work to be done.

Countering some of the indications of a pullback on FOI noted earlier however, the U.S. government nonetheless appears to be pushing ahead with e-government initiatives, recently passing the E-Government Act of 2001. This legislation establishes an online director of federal Web sites, requires federal courts to post opinions online, and requires agencies to post rulemakings online.

Closer to home, the Canadian Federal Access to Information Review Task Force²¹ is reviewing the functioning of the access legislation. Task Force Chair Andre Delagrave recently stated that the consultations are looking into a number of issues, including:

- integrating access with other measures of transparency and accountability;
- technology applications to facilitate the access process;
- routine proactive disclosure;
- new approaches to policy making that are compatible with early disclosure;
- modernizing records management; and
- creating a culture of access.

While this Task Force indicates that it is reviewing the types of issues that are consistent with an e-RD/AD approach, only time will tell if its efforts were worthwhile.²² However, should the review promote the important values of e-RD/AD, then it can be viewed as at least a partial success. It is hoped that these types of reviews also will look at the accessibility of non-digital records as, currently,

²⁰ <www.gao.gov/cgi-bin/gettrpt?rptno=GAO-01-378>, c. 06/06/01.

²¹ <www.atirtf-geai.gc.ca/home-e.html>, c. 06/06/01 A number of comprehensive and stimulating submissions have been made to the Task Force and provide useful insight into some of the ways that broader access to government information could benefit society.

²² See the IPC's submission <www.ipc.on.ca/english/pubpres/reports/info0501.htm>, c. 06/06/01.

the vast majority of historical government files are stored in non-electronic formats such as paper, microfilm, microfiche. Similarly, a great deal of data resides in difficult to access storage media such as older format data tapes, disconnected data drives and the like. Archivists have been discussing the issue of long-term storage and indexing of electronic media for years without coming to any clear consensus on how to proceed.²³ We also would be remiss if we did not point out the important public access role played by public archives²⁴ and the federal and provincial depository library programs.²⁵

²³ See NCLIS's "Assessment of Formats and Standards for the Creation, Dissemination, and Permanent Accessibility of Electronic Government Information Products" <www.nclis.gov/govt/gpo1.html>, c. 06/07/01.

²⁴ Ontario's former Provincial Archivist Ian Wilson said, "If you really want to run a government that isn't accountable, you don't keep any records. But if a government is to be accountable to the people, then we need good records of the key events, decisions and policies." <www.ipc.on.ca/english/pubpres/newslet/spr95.htm>, c. 06/06/01.

²⁵ See <www.nlc-bnc.ca/6/1/s1-300-e.html>, c. 06/06/01.

e-Government and e-RD/AD in Ontario

In the April 19, 2001 Speech from the Throne, the Government of Ontario noted that public sector organizations must be accountable to the public. The Speech stated: "Government is the servant of the people, not master. Citizens are more than "customers" or "clients"; the entire public sector belongs to them. Citizens are entitled to transparency in the operation of public institutions..."²⁶ As part of this focus on customer service and e-government, an announcement was released noting in part:

The government will become a world leader in electronic service delivery by giving citizens seamless and convenient access to government information services. Individuals and businesses will have greater choice about how, when and where they access routine government information, perform transactions, obtain advice and purchase products. They will be able to evaluate the quality of service themselves [emphasis added].²⁷

This announcement of an intention to provide better public access to information is encouraging and supports the goals of e-RD/AD. We suggest that any fully scoped e-government initiative should address two broad areas: providing better services to the public, and re-establishing the relationship between citizens and those whom they elect. The development of e-RD/AD as an integral component of electronic government services, can build on the best practices of existing RD/AD initiatives in Ontario while learning from American and European experiences.

A number of examples of successful e-RD/AD efforts already exist. The Region of York's water quality reports can now be found on its Web site. The City of Toronto publishes health inspection results of restaurants on the city's Web site. The cities of Waterloo and Mississauga routinely make a variety of information available including Council and Committee agendas, meeting minutes and municipal by-laws. The City of Brampton has incorporated a proactive RD/AD policy that has become a standard feature of the City's operating procedures. This policy includes: FOI trend analysis to determine which requests could become RD/AD material; a corporate file classification manual in which records are tagged for RD/AD retention; and active Web publishing. Provincially, the Ministry of Environment began posting a wide range of water-related information, including boil water advisories, after the tragedy in Walkerton.²⁸

These efforts only hint at the potential opportunities for e-RD/AD at the municipal and provincial levels. The principles behind FOI and RD/AD are not just about democratic rights or good government practice; they are at the heart of an individual's connection with their government and elected officials. The old adage that "information is power" has never been truer. In order to keep

²⁶ <www.premier.gov.on.ca/english/library/thronespeech-Apr1901.htm>, c. 06/06/01.

²⁷ <www.ccr.gov.on.ca/mccr/english/4W3MUL.htm>, c. 06/07/01.

²⁸ <www.ene.gov.on.ca/envision/drinking.html>.

power in the hands of the people, e-RD/AD initiatives are not only good practice, they are critical to the on-going health of our democratic system - especially when an increasing number of people appear to be disconnected from the institutions of government.

The IPC is committed to advancing the concept of e-RD/AD and has featured the topic in our 2000 Annual Report.²⁹ Through concerted efforts, the limited FOI resources of public institutions can be leveraged by using e-RD/AD and will result in lower administrative costs, higher service quality, and an improved relationship with the public and interested stakeholders.

²⁹ <www.ipc.on.ca/english/pubpres/ann_reps/ar-00/ar-00e.htm>, c. 06/12/01.